

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 35 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SUNDARAM SHERAJI VISHNOI

Versus

STATE OF GUJARAT

Appearance:

MR PB MAJMUDAR for Petitioner

MR AG URAIZEE, LD. APP with MR. MR ANAND, LD. PP. for Respondent.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 25/07/96

ORAL JUDGEMENT

Rule. Service of rule waived by Mr. A.G. Uraizee, LD. APP with Mr. M.R. Anand, LD. P.P. for the respondent - State.

This petition under Article 227 of the Constitution of India is directed against a decision of

the learned Addl. Sessions Judge, Banaskantha District at Palanpur in Criminal Revision Application No. 109 of 1995 which was filed against the order dated 22/8/1995 rendered by the trial Court rejecting return of Muddamal Jeep bearing No. RJ-16-GO-212, moved by the present petitioner.

The short submission of Mr. Majmudar, learned advocate for the petitioner is that both the Courts have failed to exercise their jurisdiction, which was required to be exercised under the following circumstances :

- (i) The learned A.P.P. consented to hand over Muddamal Jeep on conditional order to produce the same as and when required.
- (ii) The accused also consented to hand over Muddamal Jeep to the registered owner being the petitioner.

The only submission made on behalf of the respondent is that this Special Criminal Application is in a nature of second revision application and, therefore, cannot be entertained. I am unable to accept this submission made on behalf of the respondent. It is no-doubt true that at the conclusion of the trial it would be open to the State to pray for confiscation of the vehicle, but if the vehicle remains idle in the police station, as is the present state of affairs, it would get rusted and would be of no use even to the State. Instead had the Courts below exercised their jurisdiction under the aforesaid circumstances, the process of confiscation would have become easier and of some value/utility to the State. In the facts and circumstances of the case, therefore, and bearing in mind the fact that this petition arises on account of non-exercise of jurisdiction by the Courts below, following order is required to be passed :-

The Muddamal Jeep shall be returned to the petitioner by way of interim custody on the petitioner furnishing solvent security in the sum of Rs. 1,50,000/before the trial Court and on condition that the petitioner produces the Jeep once a week before the Investigating Officer till the trial is completed and the matter is decided by the trial Court and appropriate order is passed by the trial Court at the conclusion of trial with regard to the return of Muddamal Jeep or with regard to whether it should be confiscated or not and on condition that the petitioner does not use it or does not allow it to be used the Jeep for commission of any offence.

Rule made absolute in the aforesaid terms. D.S.P.

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